Supreme Court, U.
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MICHAEL RODAK, JR.,

77-757

In the
UNITED STATES SUPREME COURT

William L. Fisher,
Plaintiff-Appellant

v.

The Omaha Indemnity Co.
Defendant-Appellee

Appeal from the Michigan Supreme Court

JURISDICTIONAL STATEMENT

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In the United States Supreme Court

William L. Fisher,
Plaintiff-Appellant

-vs-

Omaha Indemnity Co.
Defendant-Appellee

JURISDICTIONAL STATEMENT

(a) There are no reports of the opinions below.

(b) The grounds on which jurisdiction of this court is invoked are: There is drawn in question the validity of Act 294 P.A.1972 on the ground of the same being repugnant to the federal constitution and the effect of thestate courts"decision is in favor of the validity thereof; said Act 294 impermissibly impaired the obligation of the 1st contract of insurance between the parties which defendant attempted to substitute with a second contract by reason of said Act 294; said Act 294 violates Art 1 Sec. 10 and Amendment XIV Sec. 1 of the federal constitution in impairing the obligation of said 1st contract; acts as an evil enticement to state court judges to violate Art VI Sec. 3 of the federal constitution and not support the same in violation of their oaths of office; and deprives plaintiff of his property without due process of law.

(i) the nature of the proceeding is a breach of contract action for damages and a declaratory judgment suit to declare the contract of insurance between

the parties to be in full force and effect.

(ii) The date of the judgment sought to be reviewed is November 12, 1975; the date of the order denying rehearing is December 10, 1975; the date the claim of appeal was filed is December 18, 1975; the court in which it was filed is the Michigan Court of Appeals; the appeal was pursued through the Michigan Supreme Court which issued its order denying rehearing on August 17, 1977.

(iii) The statutory provision conferring jurisdiction on this Court is 28 U.S.C.A. 1257(2).

(iv) Cases believed to sustain the jurisdiction are: Sturges v. Crowninshield 4 Wheaton 22; Mobile R.R. Co. v. Tennessee etc. 14 S Ct 968; 153 US 486; 38 L Ed 793 and Houston etc. R.R. Co. v. Texas 20 S Ct 545; 177 US 66; 44 L Ed 673.

(v) The validity of Act 294 P.A. 1972 is involved; the volume and page where it may be found is in the 1972 volume of the Public Acts of Michigan page 902, P.A. 294; MCLA 500.3101; MSA 24.131012; the pertinent parts, inter alia, are:

TITLE

An act ...to modify tort liability arising out of certain accidents (emphasis added); ...

500.3101 Security for payment of benefits required; definitions.

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance and residual liability insurance. Security shall be in effect continuously during

the period of registration of the motor vehicle. ...

500.3102 Nonresident owner or registrant, duty; failure, penalty. ...

Sec. 3102 (2) An owner or registrant of a motor vehicle with respect to which security is required who operates the motor vehicle or permits it to be operated upon a public highway in this state without having in full force and effect security complying with this section or section 3101 is guilty of a misdeameanor. ...

500.3135 Tort liability for non-economic loss; certain tort liability abolished; exceptions. ...

Sec. 3135(2) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance or use within this state of a motor vehicle with respect to which the security required by subsections (3) and (4) of section 3101 was in effect is abolished except as to: [certain exceptions enumerated].

(c) Whether said Act 294 including Secs 3101, 3102 and 3135 impermissibly impaired the obligation of the first contract of insurance between the parties by enticing defendant to substitute a second contract of insurance in violation of Art 1 Sec 10 and Amendment XIV Sec 1 of the federal constitution.

Whether said Act 294 including Secs 3101 3102 and 3135 impermissibly impaired the obligation of the first contract of insurance between the parties insuring tort liability by attempting to "modify" the latter and also by enticing defendant to substitute different premium payment dates than provided by said first contract of insurance in violation of Art 1 Sec 10 and Amendment XIV Sec 1 of the

federal constitution.

Whether said Act 294 including Secs 3101-2 and 3135 impermissibly impaired the obligation of contract by making it a crime for plaintiff, as a U.S. citizen, not to contract with another private party, to wit: an insurer in violation of Art 1 Sec 10 and Amendment XIV Sec 1 of the federal constitution

Whether said Act 294 including Secs 3101, 3102 and 3135 impermissibly deprives plaintiff of his life, liberty or property without due process of law by said impairment of his contract and by making a criminal out of him for not-contracting with a third party in violation of Art 1 Sec 10 and Amendment XIV Sec 1 of the federal constitution.

Whether the "authority" allowing the Court of Appeals to "pink slip" the opinion in this case and therefore prevent its publication is a denial to plaintiff of the equal protection of the laws in violation of Art XIV Sec 1 of the federal constitution.

(d) A concise statement of the case is: The term of the parties first insurance contract was from July 24 to October 24; in 1973 defendant switched insurance contracts by reason of said Act 294 and issued plaintiff a second insurance contract in which the term was from July 1 to October 1; on July 1, 1975 plaintiff posted his premium which defendant received July 6, 1975 and defendant wrongfully attempted to cancel plaintiff's insurance on the basis that his premium payment was untimely.

In the court of first instance the federal question was first raised in plaintiff's complaint in paragraph 8 thereof in which plaintiff alleged that

defendant's right to cancel was non-existant and prayed that plaintiff's insurance policy was in full force and effect; was also raised in the trial which concerned timely payment of the premium for the insurance contract between the parties; if the first contract is in force timely payment was proved; and was also raised in plaintiff's motion for rehearing in paragraph 4 thereof in which plaintiff alleged that the trial court ignored the legal effect upon the issues in the case of said Act 294 which impermissibly impaired the obligation of contract in violation of the U. S. Constitution including Articles I and XIV thereof since under the terms of said first contract July 24, 1975 is the correct due date and plaintiff's premium payment was timely and that defendant had no right to switch insurance contracts on plaintiff and hence to change the payment due date thereof.

The trial court judge ignored this federal question in violation of his oath of office to uphold the federal constitution.

In Michigan appellate practice questions sought to be reviewed are raised in the appellant's brief. Plaintiff in the intermediate appellate court (Mich. Court of Appeals) raised the federal question in Sec I of his brief in which he argued that under his first contract his payment was due July 24 and defendant acknowledged receipt on July 6 so that said payment was timely since plaintiff's federal rights under the Federal Constitution (Arts I and XIV thereof) protect him against any impairment of said first contract by any state

law, such as said Act 294.

The Michigan Court of Appeals falsely said "plaintiff failed to <u>develop</u> below facts upon which so serious a constitutional challenge might be predicated..." (emphasis added) even though plaintiff's Affidavit in support of his motion for rehearing in the trial court "developed" quite succintly the following "facts" upon which to predicate the constitutional challenge which the Michigan Court of Appeals judges ignored in violation of their oaths of office to uphold the federal constitution.

Said Affidavit of Plaintiff is as follows:

State of Michigan) S.S.
County of Oakland)

William L. Fisher, being duly sworn, deposes and says that:

1. In the past the term of plaintiff's insurance contract was from July 24 to October 24 and not from July 1 to October 1; in the year 1973 the term of plaintiff's insurance contract was from July 24, 1973 to October 24, 1973; on October 1, 1973 Michigan's "no fault" insurance law (Act 294 P.A.1972) took effect and impermissibly impaired said insurance contract in violation of the U.S. Constitution including Articles I and XIV thereof; on October 1, 1973 defendant improperly substituted a second insurance contract for said above-mentioned first insurance contract having different terms and payment dates.
2. Further deponent sayeth not.

/s/ _____
WILLIAM L. FISHER, Deponent

BEST COPY AVAILABLE

Subscribed and sworn to before me this 25th day of November A.D. 1975.

/s/
June E. MacDonald
Notary Public
County of Oakland
My Commission Expires:
December 6, 1976

Plaintiff in the final appellate court (the Michigan Supreme Court) raised the federal question in his Application for Leave to Appeal in paragraph 2 (a) thereof and in the first paragraph of his Brief in support and in paragraphs 1-4 of his Motion for Rehearing and/or Reconsideration and Brief in support.

(e) the case at bar is clearly distinguished from Zucht v. King 260 US 174 in that the case at bar draws into question said Act 294 on the ground of the same being repugnant to the federal constitution (Art. I and XIV and even Article VI thereof) for impermissably impairing the obligation of contract and the effect of the decisions of the state courts is in favor of its validity so that the case at bar is within the express terms of 28 USC 1257(2). In the case at bar the defendant insurer substituted a second insurance contract for plaintiff's first insurance contract by reason of said Act 294 and this impaired said first contract in violation of Art. 1 Sec 10 of the Federal Constitution. In the case at bar the validity of said Act 294 is also drawn in question on the basis that it violates said Art. 1 Sec. 10 and Amendment XIV Sec 1 for making a criminal out of plaintiff for merely not contracting with a third party, to wit:

an insurer. Settled precedent is on plaintiff's side in the case at bar as witness the Crowninshield and the two railroad cases cited [subparagraph (b) (iv) supra] since, in the case at bar, a contract, no less sacred than that in those cases, is impermissibly impaired by said Act 294. On the other hand, the Zucht v. King case was without merit since it questioned settled precedent, i.e. that compulsory vaccination is a violation of the Federal Constitution. The questions presented are so substantial as to require plenary consideration because said Act 294, though void (at least in parts) because in violation of the federal constitution, is the foundation, not only for defendant's attempted substitution of said second insurance contract, but for the conduct and operation of the insurance and surety business in the entire State of Michigan. In the state courts the defendant was successful on non-federal grounds, i.e., that under the second insurance contract between the parties plaintiff's premium payment was supposedly untimely, but if plaintiff's view of the case is correct, the federal grounds make the first, not the second, insurance contract between the parties the only contract that is valid and in force. Hence, plaintiff's premium payment was timely and the judgment does not rest on an adequate non-federal basis. In the state courts the defendant asserted that plaintiff's "contention as to the claimed unconstitutionality of Act 294 was decided adversely to him in another lawsuit commenced by him in the federal district court and affirmed appeal by the Sixth Circuit Court of Appeals". This is <u>false</u> and defendant

well knows it is false. On Oct. 1, 1973, the effective date of said Act 294, plaintiff in the case at bar commenced an action in the federal district court for the Eastern District of Michigan for declaration of invalidity of said Act 294 and for damages. This action was dismissed without prejudice and without reaching the merits on the basis that jurisdiction under the federal declaratory judgment statute is discretionary with the federal district court. Such dismissal was affirmed by the U.S. Court of Appeals for the Sixth Circuit. (See William L. Fisher, Plaintiff-Appellant vs. Omaha Indemnity Company, Defendant-Appellee Docket No. 74-1078.)

(i) The following is a copy of the judgment appealed from:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

William L. Fisher, Plaintiff

-vs- NO. 75-128542

Omaha Indemnity Company,Defendant

JUDGMENT OF DISMISSAL

At a session of said Court, held in the Courthouse Towers, Pontiac,Mich., on November 12, 1975.

Present: Honorable Frederick C.Ziem
Circuit Judge

This cause having come on to be heard upon the pleadings and proofs of Plaintiff taken therein, and Defendant having moved for a judgment of dismissal upon the completion of Plaintiff's proofs, and the matter having been argued by Plaintiff and counsel for Defendant, and

the Court having determined that it is bound by the wording of the contract between the parties, and that the facts show that payment of the premium due on the policy of casualty insurance was not received by Defendant on due date thereof, and that Defendant elected to lapse the policy for non-payment of the premium due July 1, 1975, which it had the right to dc;

IT IS ORDERED AND ADJUDGED that Plaintiff's complaint be and the same is hereby dismissed.

/s/_____
Frederick C. Ziem,Circuit Judge

The following is a copy of the Order on Rehearing:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

William L. Fisher, Plaintiff

NO. 75-128542

Omaha Indemnity Company,Defendant

ORDER DENYING MOTION FOR REHEARING AND/OR RETRIAL

At a session of said Court, held in the Courthouse Towers, Pontiac,Mich., on December 10, 1975.

Present: Honorable Frederick C.Ziem
Circuit Judge

Plaintiff, having filed a motion for Rehearing and/or Retrial respecting the Judgment of Dismissal entered by this Court on November 12, 1975, and the Plaintiff and counsel for Defendant having appeared, and the Court hearing oral argument and being fully advised in the premises;

IT IS ORDERED that Plaintiff's Motion for Rehearing and/or Retrial be and the same is hereby denied.

/s/ Frederick C. Ziem, Circuit Judge

The following is a copy of the Notice of Appeal:

STATE OF MICHIGAN
IN THE COURT OF APPEALS

William L. Fisher, Plaintiff-Appellant	Court of Appeals No. (to be assigned)
-v-	
The Omaha Indemnity Co. Defendant-Appellee	Lower Court No. 75-128542(Oakland County Circuit Court)

CLAIM OF APPEAL
(filed December 18, 1975)

Plaintiff-Appellant William L. Fisher claims an appeal from the judgment of dismissal entered on November 12, 1975 by Frederick C. Ziem, Circuit Judge.

Respectfully submitted,

/s/ William L. Fisher
Plaintiff-Appellee in Pro Per
1051 Naughton St. Rm 202
Troy, Michigan, 48084

Dated: December 17 A.D. 1975.

The following is a copy of the opinion of the Michigan Court of Appeals:

STATE OF MICHIGAN
IN THE COURT OF APPEALS

William L. Fisher Docket No. 26973
Plaintiff-Appellant, Dated: Feb. 9, 1977
-vs- The Omaha Indemnity Co. Defendant-Appellee

BEFORE: R.M. Maher, P.J., and V.J. Brennan and Bashara, JJ.

MEMORANDUM OPINION

Plaintiff sought a declaration below that his family automobile policy with defendant was still in effect. After a bench trial, the court entered judgment for defendant. Plaintiff appeals, raising two issues. The second issue, however will not be considered because Plaintiff, by failing to offer supporting citation or policy reasons in support of his position, is deemed to have waived review. Ingham County v Department of Social Services, 62 Mich App 683; 233 NW2d 833 (1975); People v Sims, 62 Mich App 550; 233 NW2d 645 (1975).

The remaining issue is phrased "should plaintiff have judgment because the premium payment was timely under the terms of said first contract?" Plaintiff's argument is that, somehow, PA1972, No. 294 (no fault) changed his premium payment dates and therefore was an unconstitutional impairment of his contract with defendant. Had his contract with defendant not been so impaired, his premium payment in July of 1975 would have been timely and his policy would not have been terminated for non-payment of premium. Since plaintiff failed to develop below facts upon which so serious a constitutional challenge might be predicated, we are unable to determine if there is any merit to this novel issue.

Affirmed.

The following is a copy of the opinion of the Michigan Supreme Court on plaintiff's Application for Leave to Appeal:

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court, in the City of Lansing on June 29, A.D. 1977.

CR 19-261
William L. Fisher, Plaintiff-Appellant,

-v- Docket No. 59385

Omaha Indemnity Co., Defendant-Appellee

COA: 26973
LC: 75-128542

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because appellant has failed to persuade the Court that the questions presented should be reviewed by this Court.

The following is a copy of the opinion of the Michigan Supreme Court on plaintiff's Motion for Rehearing and/or Reconsideration:

William L. Fisher, Plaintiff-Appellant
v- 59385 COA:26973 LC: 75-128542

Omaha Indemnity Co., Defendant-Appellant

On order of the Court, plaintiff-appellant's in propria persona motion for rehearing is DENIED because GCR 1963, 864.4 provides for the filing of such motions only in opinion cases. Plaintiff-appellant's motion for reconsideration of this Court's order of June 29, 1977 is considered, and the motion is DENIED, because it does not appear that said order was entered erroneously.

CONCLUSION

In respect to the foregoing Jurisdictional Statement plaintiff-appellant believes that the has complied in all respects with Rule 15 of the Rules of the Supreme Court of the United States and has shown that jurisdiction indeed resides in this Court.

Respectfully submitted,

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Plaintiff-Appellant in pro per
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